

## REMARKS

### Examiner Interview

Applicant's representative wishes to express his sincere thanks to Examiners Morgan and Kalinowski for the courtesy of an interview held on November 3, 2004. During the interview, Applicant's representative reviewed the invention and highlighted differences between the invention and the cited references, which are described in greater detail below.

The Examiners and Applicant's representative also discussed possible amendments to the claims. In view of these discussions, the claims have accordingly been amended to better describe the subject matter which Applicant regards as the invention.

### The Claims are Patentable Over the Cited References

Claims 129-141 have been rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,085,169 to Walker, et al. ("Walker") in view of an article entitled "Air Charters Fly To Internet" by David Jonas ("Jonas"). Claims 130-139 have been canceled. Claims 129, 140, and 141 remain in the application. Applicant respectfully traverses this rejection.

*Walker* describes a flight reservation system for scheduled flights whereby: (1) a commercial airline can submit a set of rules and restrictions governing the conditions under which the airline would be willing to accept an offered price for a seat on a given scheduled flight, and (2) a customer can submit an offer to purchase a ticket for that flight – at a price defined by the customer. *Walker's* system provides a mechanism by which the customer's purchase offer can be accepted and a ticket issued whenever the customer's offer falls within the parameters defined by the airline's rules and restrictions. Thus, *Walker* provides a way to match individual customers to seats on scheduled commercial flights using a variable pricing model that enables an airline to maximize flight-based revenue.

One of the goals of *Walker's* variable pricing model is to satisfy a desire on the part of commercial airlines to sell tickets for seats that are predicted to be empty. For such empty seats, airlines are willing to lower their prices to an absolute minimum price necessary to offset the marginal cost of transporting one more customer on a scheduled commercial flight. However, airlines are not willing to publicize these discounts. (See *Walker* at 1:34-51.) Such publicity could start a fare war among competitor airlines, and could also compromise the airline's full-fair price structure. (*Id.*) *Walker's* conditional purchase offer (CPO) system addresses this need by creating a scheme in which the airlines need not publish their actual (rock-bottom) price for seats that will otherwise fly empty. Using *Walker's* system, the airline can

somewhat discretely disclose its minimum price structure to a computer that is programmed to receive blind purchase offers from customers and to accept those offers only when the offered price is higher than the minimum price set by the airline. Alternatively, if a customer submits a purchase offer that is too low, *Walker* provides a mechanism for countering the customer's offer in a way that does not reveal the airlines minimum price.

Throughout *Walker's* disclosure, it is apparent that an airline will only utilize *Walker's* conditional purchase offer system when the airline realizes that a scheduled flight will depart with empty seats. Not only is this fact implicit in the underlying economics of airline fare structures, it is explicit in *Walker's* disclosure. *Walker* clearly teaches that its CPO algorithm is not intended to function unless a scheduled flight will have empty seats. (*Walker* at 23:59 - 24:13 and Fig. 19, item 1910.) In *Walker's* system, every flight has been scheduled, every airplane will fly, and every airplane has some empty seats that an airline would like to fill. *Walker's* primary concern is providing a computerized transaction service that enables an airline to fill those empty seats without publicizing the low price the airline was actually willing to accept. *Walker* has nothing to do with utilizing private aircraft for public transportation.

Claim 129 of the present invention is directed to a method for accepting individual seat reservations on an unscheduled private aircraft that will be scheduled to fly only when a number of received individual reservation bids collectively satisfy a predetermined set of criteria. The Examiner recognizes that *Walker* fails to teach the present invention. (See, e.g., Office Action at 4.) However, the Examiner asserts that one of ordinary skill in the art would have been led to combine *Walker* with *Jonas* because the combination would have given "customers instant access to thousands of private aircraft carriers." (Office Action at 4.) Assuming for the sake of argument that one skilled in the art might attempt the *Walker-Jonas* combination, Applicant respectfully submits that, proceeding from the teachings of *Walker* and *Jonas* alone, and not being led by the teachings of the present invention, there is nothing in either reference that would permit one of ordinary skill in the art to achieve the present invention.

Every aircraft in *Walker's* disclosure has already been scheduled to fly. The flights have already been defined and many seats have already been purchased by customers who have paid full fare. *Walker's* CPO algorithm is useful only when an airline wishes to sell empty seats on scheduled commercial flights without publicly disclosing the low prices being paid by discount customers. *Jonas*, on the other hand, is an article that tells a story of how private aircraft companies, such as AirCharter.com, have begun to use the Internet to charter private aircraft. It is clear, even to one of ordinary skill in the art, that *Walker* and *Jonas* describe entirely different business models. Where *Walker* permits customers to purchase individual seats on scheduled

commercial flights, *Jonas* describes how a single customer might reserve an unscheduled private aircraft as a whole. Neither reference relates in the slightest way to a contingency system for a plurality of private aircraft. Certainly neither reference has the goal of utilizing private aircraft for public passengers who have no prior relationship to one another or to the aircraft. If *Walker* were to be combined with *Jonas*, one skilled in the art would be faced with the problems of (1) converting an unscheduled private aircraft into a scheduled commercial flight without any advance indication of consumer demand; and also (2) figuring out how individual customers could purchase individual seats on private aircraft that not only are unscheduled, but until the present invention have been reserved only as an entire unit and not by the seat. Nothing in either *Walker* or *Jonas* supplies these missing elements. Only the present invention provides the necessary teachings.

Moreover, “[where] there is no evidence of record that a person of ordinary skill in the art at the time of [an applicant’s] invention would have expected [a problem], ... it is not proper to conclude that [an invention], which solves this problem ... would have been obvious to that hypothetical person of ordinary skill in the art.” *In re Peehs*, 612 F.2d 1287, 1290 (CCPA 1980) (quoting *In re Nomiya*, 509 F.2d 566, 572 (CCPA 1975)). Thus, where an advance in the art lies in the discovery of a problem, an examiner must provide evidence that a person of ordinary skill in the art at the time of the invention would have expected a problem to exist. *See also, In re Zurko*, 111 F.3d 887, 890 (Fed. Cir. 1997). The Examiner has not provided this necessary evidence to support a *prima facie* case of obviousness. Neither *Walker* nor *Jonas* teach or suggest that there may be a problem reserving unscheduled private aircraft on an individual seat basis. Thus, it is improper to use the *Walker–Jonas* combination to justify a rejection under section 103(a). For at least these reasons, independent claim 129 is patentable over *Walker* in view of *Jonas* and should be allowed. Independent claim 140, which describes similar features, is also patentable over the cited references. Claim 141, which depends from independent claim 140, is also patentable *Walker* in view of *Jonas* and should be allowed as well.

## Conclusion

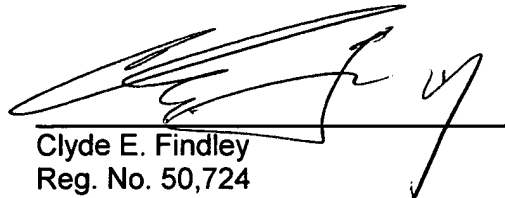
For the reasons given above, Applicant respectfully submits that claims 129, 140, and 141 patentably define the invention over *Walker* in view of *Jonas* and should be allowed. A Notice to that effect is earnestly solicited. The Examiner is invited to contact the undersigned at (202) 220-4200 to discuss any aspect of the application.

Respectfully submitted,

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